IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 520 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHAIKH IQABAL AHMED SHAIKH

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 520 of 2003

MR NM KAPADIA for Petitioner No. 1

MR VM PANCHOLI, APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 24/06/2003

ORAL JUDGEMENT

The petitioner above named has preferred this petition under Article 226 and 227 of the Constitution of

India, read with Section 482 of the Code of Criminal Procedure, 1973 for appropriate writ, order or direction for deleting a condition imposed by the learned Addl. Sessions Judge, Surat on 15/05/03 in Criminal Revision Appl. No.145/2003 directing the petitioner to deposit an amount of Rs.50,000/- in cash for getting interim custody of the vehicle in question and also for deleting a condition, directing the petitioner to obtain prior permission of the trial court, for taking the truck outside the territory of State of Gujarat.

2. It appears from the record that an offence has been registered before the Prohibition Station (South) at Surat being C.R.No.598/2003 for offences punishable under Section 70(A) and 81 of the Bombay Prohibition Act, 1949. A truck bearing no.AP-9-U-5370 was seized. In the said vehicle, it is alleged that rotten jaggery was carried illegally. The petitioner applied for the interim custody of the said vehicle. After hearing, the learned Judicial Magistrate First Class, Surat dismissed the said application by order dated 19/04/03.

3. Feeling aggrieved by the said order of the trial court, the petitioner preferred Criminal Revision Application No.145/2003. The same was allowed by the learned Addl. Sessions Judge, Surat by order impugned in this revision application. However, the learned Addl. Sessions Judge had imposed certain conditions. The following conditions have been challenged before this Court;

(i) The petitioner shall deposit a sum of Rs.50,000/- cash before the trial court.

(ii) The petitioner shall not take the vehicle in question, outside the territory of the State of Gujarat, without the prior permission of the trial court.

4. The petitioner has challenged the said two conditions stating that when sufficient security was ordered, it may not be necessary or legal to direct the petitioner to deposit a sum of Rs.50,000/-. It has also been contended that there is no reason to direct the petitioner, that he will not carry the truck, outside the territory of the State of Gujarat, without the prior permission of the trial court.

5. The petitioner has, therefore, come with this

revision application in order to challenge the said two conditions. The petitioner has, therefore, prayed that the revision application be allowed and the aforesaid two conditions may be deleted. Rule was issued and pursuant to the service of Notice of Rule, Mr.V M Pancholi, learned APP appears on behalf of respondent State.

6. During the course of hearing, it is found that the muddamal truck has been ordered to be entrusted to the petitioner on certain conditions. One of the conditions is that the petitioner shall furnish solvent security in a sum of Rs.5,00,000/-. A further condition has been imposed that the petitioner shall deposit a cash sum of Rs.50,000/-. It is quiet clear that when a solvent surety in a sum of Rs.5,00,000/- has been directed, it would not be very much necessary, to have a second condition of deposit of Rs.50,000/- before the trial court. In that view of the matter, to the above extent, the order of the trial court requires interference of this Court, in this revision application with respect to the condition that the muddamal truck will not be carried outside the State of Gujarat, without the prior permission of the trial court. It appears that even looking to the facts and circumstances of the case, the said conditions were not required to be imposed on the petitioner. The learned Addl. Sessions Judge appears to be of the view that the petitioner would be misusing the position, by carrying the vehicle outside the State of Gujarat. If some illegality is committed by the petitioner, then, it is always open to the officers concerned, to take appropriate civil/criminal action against the petitioner. But, having regard to the facts and circumstances of the case, it is not found to be just, proper or necessary to impose the aforesaid conditions.

7. In above view of the matter, it seems that the above conditions were not required to be imposed on the petitioner and therefore, they require to be deleted.

8. For the foregoing reasons, this petition is allowed. The order of the learned Addl. Sessions Judge, Surat dated 15/05/03 in Criminal Revision Appl. no.145/2003 is partly modified to the extent that the condition to deposit Rupees Fifty Thousand for getting the muddamal vehicle back, by way of interim custody is ordered to be deleted. Same way, the condition that the petitioner shall not carry the muddamal truck, outside the territory of the State of Gujarat, without the prior permission of the trial court, is also deleted. This petition is accordingly allowed. Rule is made absolute.

Direct service is permitted.

(D. P. Buch, J.)

pravin/